

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

NORTH SHORE LINEN, INC.
Employer¹

and

Case No. 29-RC-11307

LOCAL 660, UNITED WORKERS OF AMERICA
Petitioner²

DECISION AND DIRECTION OF ELECTION

North Shore Linen, Inc. (“the Employer”) provides linen cleaning services to restaurants, caterers and other business entities in and around New York City. On February 7, 2006, Local 660, United Workers of America (“Local 660” or “the Petitioner”) filed a petition under Section 9(c) of the National Labor Relations Act, seeking to represent a unit of approximately 35 to 40 employees who work at the Employer’s plant in Copiague, New York, including sorters, washroom employees, ironers and “make up” employees who package the orders for delivery.

The Employer has raised two issues in connection with the petition. First, the Employer declined to stipulate that Local 660 is a labor organization, as defined in Section 2(5) of the Act. Second, the Employer contends that the petitioned-for unit is inappropriate for bargaining, inasmuch as it does not include the seven drivers who deliver customers’ orders. The Employer contends that the drivers share a strong

¹ The Employer’s name appears as amended at the hearing (Board Exhibit 2).

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community of interest with the petitioned-for plant employees, and therefore must be included in the unit.

A hearing was held before Sharon Chau, a hearing officer of the National Labor Relations Board. In support of its status as a labor organization, the Petitioner called its officer and attorney, Bryan McCarthy, to testify. In support of its position on the bargaining unit issue, the Employer called its owner and principal, Lawrence Gentile, to testify.

After considering the entire record, I conclude that the Petitioner meets the Act's definition of labor organization, and that the petitioned-for unit is appropriate for the purposes of collective bargaining. Accordingly, I will direct an election below in that unit.

Labor organization status of the Petitioner

Section 2(5) of the Act defines a labor organization as:

any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

Bryan McCarthy is an officer of Local 660, and also serves as its attorney.

McCarthy testified that Local 660 exists for the purpose of representing employees in dealing with their employers. He has personally negotiated collective bargaining agreements with employers on behalf of employees, and represented employees in grievances against their employers regarding their hours of work, rates of pay, vacation time and terminations. Furthermore, McCarthy testified that employees participate in the organization by submitting bargaining proposals to the union during contract negotiations, attending meetings and voting for union shop stewards.

In short, McCarthy's testimony establishes that the Petitioner exists for the purpose of dealing with employers concerning grievances and other terms and conditions of employment. Employees participate in the Petitioner's organization, for example, by attending meetings and participating in elections for shop stewards. Thus, the Petitioner clearly meets the broad definition of labor organization in Section 2(5) of the Act. *See also Alto Plastics Mfg. Corp.*, 136 NLRB 850 (1962).

Facts regarding the appropriateness of the petitioned-for bargaining unit

The following description of the Employer's operation is based on Lawrence Gentile's testimony, which was unrebutted.

General description of the Employer's operations and plant

The Employer cleans linens (tablecloths, napkins, aprons, uniforms, etc.) for restaurants and other businesses in the New York City area. Drivers deliver the clean linens to each customer, and bring the customer's soiled linens back to the plant in Copiague, where the linens are sorted, washed, ironed and re-packaged for delivery the next day.

Gentile testified that the Employer's plant is approximately 17,000 square feet in size. The "soil room," where the soiled linens are unloaded and sorted, runs along the whole back of the building, approximately 80 feet long. The washroom is directly in front of the soil room. He did not describe the exact locations of the "production" area (for ironing and steaming) or "makeup" area (for making up orders for delivery). However, he testified that the drivers unload soiled linens from their trucks in the soil room in the afternoon, and then load the clean linens back into their trucks from near the makeup area in the morning.

The plant manager is David Smith, and the general manager is Gary Brooks.

Soil room employees

The Employer employs six employees in the soil room. Their duties include helping the drivers to unload soiled linens when the trucks start coming back to the plant in the afternoon. They spend the rest of their shift sorting the linens into various groups, depending on the type of material and the type of soil because, as Gentile explained, “everything gets washed differently.” Gentile also explained that some items (like tablecloths) are interchangeable among different customers, whereas some items (like uniforms) must be kept separate for particular customers. Although it is not entirely clear from the record, each driver puts the items to be kept separate into separate bags and somehow identifies them as such, so that the soil room employees know to keep those items separate.

Soil room employees have contact with the drivers every day when they help unload the trucks. Gentile stated that drivers sometimes verbally remind the soil room employees to keep certain items separate.

Soil room employees work from about 2:00 or 3:00 or 4:00 in the afternoon, until about midnight. Gentile stated that they have no specialized training or skills. They earn \$7 to \$8 per hour, and earn overtime pay if they work more than 40 hours in a week.

Washroom employees

The Employer employs six employees in the washroom. They load, unload and operate the washing machines there. Gentile testified that washroom employees need to “know a little more” than the other plant employees to operate the washing-machines’ computer programs and to use the appropriate chemicals and detergents for cleaning

various types of materials and soil. Gentile testified that it takes about one week for new washroom employees to learn these things.

Washroom employees also help drivers unload their trucks, if they have a chance while the washing machines are running. Gentile testified that this happens at least once per week, sometimes more.

Washroom employees work from 6:00 a.m. to 2:15 p.m. They earn \$8 to \$10 per hour, plus overtime for more than 40 hours per week.

Production employees

The largest group of employees, approximately 20, works on the Employer's "production" floor, where clothes get ironed or steamed, and folded. Most of the production employees put linens (including tablecloths and napkins) through the ironing machines there, and two employees also spend part of their time hanging uniforms in a steam tunnel. They generally do not interact with the drivers.

Gentile stated that the production employees' shift is one hour later than the soil room and washroom employees' shift, i.e., approximately 7:00 a.m. to 3:00 p.m. They earn \$7 to \$8 per hour, plus overtime for more than 40 hours.

Makeup employees

The Employer employs five employees who make up the customers' orders, including bagging the clean linens and putting racks together for each customer. Gentile testified that the makeup employees have no specialized training or skills. They work on the same schedule as the production employees, approximately 7:00 a.m. to 3:00 p.m. They earn \$8 to \$12 per hour, plus overtime for over 40 hours.

Drivers who pick up their trucks at the plant each morning³ interact with the makeup employees every day before loading their trucks. Specifically, the drivers review their orders with the makeup employees, finding out where the orders are located, and checking to make sure they have everything on their list.

Drivers

The Employer employs seven drivers, who load their trucks, deliver clean linens to customers, pick up the customers' soiled linens, and bring the soiled linens back to the plant. Sometimes they help make up their own orders if the makeup department is short-staffed, at least once per month. According to Gentile, drivers do not have specialized skills, and need only a regular driver's license.⁴

All drivers do not work on the same schedule. Gentile stated that some drivers arrive at the plant in Copiague at 8:00 a.m., load their trucks, drive their routes, and return to the plant with soiled linens "whenever they finish" in the afternoon. These four drivers apparently deliver on Long Island and nearby boroughs like Queens. There is also one driver (identified only as "Mike") who brings a loaded truck home with him in the afternoon, keeps it in his driveway overnight, and leaves for his routes directly from home the next morning.

Three other drivers, who drive further west to Manhattan where there is also more traffic, leave earlier. Specifically, Fausto Cruz arrives at the plant at 5:00 a.m., when no one else is there except one manager. (The makeup employees have already prepared his orders the day before.) The record does not indicate what time Cruz arrives back at the

³ Two drivers who leave directly from their homes are discussed separately below, in the section on drivers.

plant. Since the other two Manhattan drivers (Marty Boeck and Peter Elam) live in Valley Stream, which is much closer to Manhattan than the Copiague plant, they take their loaded trucks home with them in the afternoon, and leave as early as 3:00 a.m. from their home the next morning. They deliver first to the restaurants that are open early in the morning, then to the restaurants that open later. Gentile testified that Boeck and Elam usually return to the plant between 12:00 and 1:00 p.m.

As stated above, at least some drivers have contact with soil room employees when they unload their trucks in the afternoon. It appears that Manhattan drivers Boeck and Elam may not have such contact because they leave the plant in the early afternoon, before the soil room employees start arriving at 2:00 p.m. Likewise, at least some drivers interact with makeup employees while loading their trucks in the morning, but Boeck and Elam's extent of interaction with makeup employees is not clear from the record, since those drivers do not load their trucks at the plant in the morning. It is possible that they interact with makeup employees in the early afternoon.

All but one⁵ of the drivers are paid a salary, and do not receive overtime pay for working more than 40 hours. Gentile testified that the salaries are equivalent to \$12 to

⁴ Gentile stated that the drivers do not need a commercial drivers license (CDL) because they drive box trucks weighing less than 18,000 pounds.

⁵ One driver (Alex Zулnargo) is paid an hourly wage of \$12, and may receive overtime pay for more than 40 hours per week. Gentile did not know why Zулnargo is paid differently than the other drivers.

\$20 per hour, if one assumed a 40-hour work week.

Interchange between employees

As noted above, Gentile testified that the non-Manhattan drivers who leave from the plant in the morning interact with the makeup employees while checking their orders and loading their trucks. (The Manhattan drivers either leave from their homes, or come in early before the makeup employees arrive). Drivers also interact with the soil room employees, who help unload the trucks in the afternoon. Drivers sometimes remind soil room employees to keep certain items separate.

Gentile further testified that the Employer occasionally assigns plant employees to help a driver deliver and pick up the linens, such as when a driver has a particularly heavy route. According to Gentile, such assignments vary in frequency -- they might happen two times in one week, or not for a whole month. The plant employees help load and unload the linens; there is no evidence that they ever drive the trucks.

Finally, Gentile testified that two former plant employees have become drivers in the past year: Alex Zulnargo (the hourly paid driver) and Carlos Alverado (who is no longer employed by the Employer).

The record contains additional information regarding the extent of interaction and interchange among the various employees *within* the plant, such as washroom employees helping with the ironing machines and steam tunnels, or the ironing employees helping in the makeup department. Gentile testified that “They are all interchangeable.” This information will not be described in detail here, however, since it is less relevant than the plant employees’ extent of interaction with the drivers.

Other information

Gentile testified that plant manager David Smith supervises the plant employees, including soil room, washroom, and production employees and, to some extent, the makeup employees. General manager Gary Brooks deals more with the “outside,” including dealing with customers, soliciting new customers and supervising the drivers. Gentile explained that Brooks supervises the makeup employees more than Smith, since Brooks “knows what’s going on outside more” than Smith, in terms of what the customers need.

Plant employees, who are all paid on an hourly basis, punch a time clock at the Employer’s plant. They generally eat lunch between 11:30 a.m. and 12:00 noon, unless Smith changes the time on a particular day. Washroom employees alternate lunch times with each other, to keep the washing machines running at all times. Drivers, most of whom are salaried, do not punch a time clock. Brooks determines their starting times and their routes. The drivers do not have a set lunch time. Gentile explained that they just eat whenever they can get a break during their routes.

Gentile testified that all employees get uniforms, but they can choose whether or not to wear them. Drivers generally wear the uniforms, and Gentile says he “encourages” drivers to wear them, but they are not required. Gentile claims that many “inside” employees choose to wear uniforms too, for example, to keep their own clothes clean.

Drivers receive health insurance from the Employer, as do managers Smith and Brooks. However, plant employees do not receive health coverage. The pension plan is open to anyone, but Gentile testified that the plant employees do not participate. One

driver participates in the pension plan. No employees get paid vacation leave or sick leave.

Drivers are required to have a driver's license, whereas plant employees are not.

Discussion of bargaining unit issue

It is well established that a certifiable bargaining unit need only be an appropriate unit, not the most appropriate unit. Morand Bros. Beverage Co., 91 NLRB 409 (1950), *enfd.* 190 F.2d 576 (7th Cir. 1951); Omni-Dunfey Hotels, Inc., d/b/a Omni International Hotel of Detroit, 283 NLRB 475 (1987); P.J. Dick Contracting, 290 NLRB 150 (1988); Dezcon, Inc., 295 NLRB 109 (1989). The Board's task, therefore, is to determine whether the petitioned-for unit is an appropriate unit, even though it may not be the only appropriate unit or the "ultimate" unit. The Board has stated that, in making unit determinations, it looks "first to the unit sought by the petitioner. If it is appropriate, our inquiry ends. If, however, it is inappropriate, the Board will scrutinize the employer's proposal." Dezcon, Inc., *supra*, 295 NLRB at 111. Thus, the unit requested by a petitioning union is the starting point for any unit determination. In assessing the appropriateness of any proposed unit, the Board considers such community-of-interest factors as employee skills and functions, degree of functional integration, interchangeability and contact among employees, and whether the employees have common supervision, work sites, and other working terms and conditions.

Bearing these principles in mind, I find that the petitioned-for unit of plant employees (sometimes referred to as "inside" employees) constitutes an appropriate bargaining unit, notwithstanding its exclusion of drivers (i.e., "outside" employees). To

begin by stating the obvious, these two groups have different work sites. The petitioned-for employees all work inside the Employer's plant, whereas the drivers work primarily in their trucks and on their routes, away from the plant. As a result, the contact between these groups is somewhat limited. Some drivers who leave straight from their own homes in the morning (Marty Boeck, Peter Elam and "Mike") do not even report to the plant. At least one other driver (Fausto Cruz) arrives early in the morning, before any plant employees arrive. Thus, the drivers' contact with plant employees seems to be limited to some contact with soil room employees in the afternoon, when the trucks are unloaded; some contact with makeup employees when orders are reviewed and loaded onto the trucks; and occasional assignment of plant employees to work as helpers on the routes. I do not find this amount of contact to be sufficient to negate the essentially separate nature of the "inside" and "outside" work locations.

The supervision of these two groups also follows the inside/outside dichotomy, with plant manager David Smith supervising the plant employees, and general manager Gary Brooks overseeing the drivers and other "outside" matters. The fact that there is some supervisory overlap for the makeup employees does not erase this basic dichotomy.

Furthermore, the record indicates that plant employees and drivers have different skills and functions. Gentile stated that the plant employees have no specialized training or skills, and are substantially "interchangeable" with each other, whereas the drivers must have drivers' licenses. The plant employees are not required to have licenses, and there is no evidence that plant employees ever substitute for drivers.

Finally, the two groups have very different terms of employment. Specifically, plant employees earn between \$7 and \$12 per hour, and are hourly paid, whereas drivers

earn the equivalent of \$12 to \$20 per hour and are salaried. Plant employees may earn overtime for working more than 40 hours per week, whereas drivers do not earn overtime. Plant employees punch a time clock, whereas drivers do not. And drivers receive health care coverage while plant employees do not.

Based on the foregoing, I conclude that the petitioned-for “inside” plant employees share a sufficiently distinct community of interest from the drivers to constitute *an* appropriate bargaining unit. I particularly note their separate work locations, their separate supervision, their lack of substantial interchange, their distinct skills and licensing requirements, and differences in their wages and benefits. By contrast, the Employer’s evidence has not demonstrated such a close community of interest between the plant employees and drivers to render the petitioned-for unit inappropriate.

Accordingly, I hereby find that the petitioned-for unit of plant employees,⁶ constitutes an appropriate unit for the purposes of collective bargaining. I will therefore direct an election in that unit below.

CONCLUSIONS AND FINDINGS

Based on the entire record in this proceeding, including the parties’ stipulations and in accordance with the discussion above, I conclude and find as follow:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The parties stipulated that North Shore Linen, Inc. is a domestic corporation, with its principal office and place of business located at 800 Chettic Avenue,

Copiague, New York. It is engaged in providing linen cleaning services to restaurants, caterers and other businesses. During the past year, which period is representative of its annual operations generally, the Employer purchased and received materials and supplies at its Copiague facility valued in excess of \$50,000 directly from entities located outside the State of New York.

Based on the parties' stipulation, I find that the Employer is engaged in commerce within the meaning of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The Petitioner, a labor organization within the meaning of Section 2(5) of the Act, claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer, within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. Based on the foregoing discussion, I find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time plant employees, including soilroom employees, washroom employees, production employees, and makeup employees, employed by the Employer at its 800 Chettic Avenue, Copiague, New York facility, but excluding all other employees, drivers, guards and supervisors as defined in the National Labor Relations Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of

⁶ I will describe the petitioned-for group as “plant employees” (even though the petition itself calls them “warehouse employees”) because the Employer’s operation is not really a warehouse.

election to be issued subsequently subject to the Board's Rules and Regulations. Eligible to vote are employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States who are employed in the unit may vote if they appear in person or at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether they desire to be represented for collective bargaining purposes by Local 660, United Workers of America.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, four (4) copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. North Macon

Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the Regional Office, One MetroTech Center North-10th Floor (Corner of Jay Street and Myrtle Avenue), Brooklyn, New York 11201 on or before **March 29, 2006**. No extension of time to file the list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional Office at least five working days prior to the commencement of the election that it has not received the notices. Club Demonstration Services, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by **April 5, 2006**.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may

be electronically filed with its offices. If a party wishes to file the above-described document electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board website: www.nlr.gov.

Dated: March 22, 2006.

John J. Walsh
Acting Regional Director, Region 29
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